

D.P.U. 94-184

Application of Nantucket Electric Company for approval by the Department of Public Utilities, under G.L. c. 164 § 14 of the issuance of a Term Note in the amount of \$2,150,000 for the purpose of repayment of an existing term loan scheduled to mature on March 31, 1995.

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                         FOR: NANTUCKET ELECTRIC COMPANY  
                         Petitioner

## I. INTRODUCTION

On December 16, 1994, Nantucket Electric Company ("Nantucket" or "Company"), pursuant to G. L. c. 164 § 14, filed a petition with the Department of Public Utilities ("Department") for approval of a term note ("Term Note") in the amount of \$2,150,000 through The First National Bank of Boston. The Company seeks approval of the Term Note in order to repay the existing term loan, originally scheduled to mature on January 14, 1995, which has been amended to extend to March 31, 1995. The Term Note has an outstanding balance of \$2,150,000. The petition was docketed as D.P.U. 94-184.

Pursuant to notice duly issued, a public hearing was held at the Department's office in Boston on January 31, 1995. No petitions for leave to intervene were filed. The Company sponsored the testimony of James Joynt, treasurer for the Company, and offered four exhibits in support of its petition which the Department entered into the record. The Department entered six exhibits and the responses to two record requests.

## II. DESCRIPTION OF PROPOSED TERM NOTE

According to Nantucket, the purpose of the \$2,150,000 Term Note is to allow the Company to refinance its existing Term Loan with The First National Bank of Boston, originally scheduled to mature on January 14, 1995, and subsequently amended to extend to March 31,

1995 (Exh. NEC-1, at 1; Tr. at 6).

The Company states that the existing term loan was entered into pursuant to authority granted by the Department in Nantucket Electric Company, D.P.U. 87-206 (1988), wherein the Company was authorized to enter into a revolving credit note or notes in the maximum aggregate principal amount of \$4,000,000 (Exh. NEC-1, at 2). The term loan entered into was a five-year bullet loan with a maturity date of February 1, 1993, subsequently extended to March 1, 1993 (id.). A new short-term \$2,750,000 loan was entered into which required a principal payment of \$100,000 and had a due date of January 15, 1994, subsequently extended to April 1994, then amended and extended to January 14, 1995, then amended and extended to March 31, 1995 (id. at 2-3). Under the terms of the loan, the Company was required to pay \$500,000 of the principal in 1994, leaving a remaining balance of \$2,150,000 (id. at 3).

The proposed \$2,150,000 Term Note will enable the Company to pay off the existing note so that cash flow from operations can be used for capital expenditures on extensions, additions, and improvements to utility plant and properties, or to pay obligations of the Company incurred for such expenditures (id. at 2; Tr. at 19). Examples of capital additions cited are meters, transformers, tank improvements, generator improvements, and distribution circuit conversions (Tr. at 19-20). The

initial interest rate will be one and one-half percentage points above the prime rate of The First National Bank of Boston; when the Company's cable project begins commercial operation, the rate will move to one-half percent above prime (Exh. NEC-1, at 2; Tr. at 6, 8-9).

The Company must repay \$300,000 per year of the outstanding principal, with a balloon payment of a maximum of \$1,250,000 at final maturity, which is defined as three years from the closing date (Exh. NEC-1, at 2; Tr. at 6, 14). The maximum final payment could change as a result of mandatory prepayment provisions provided for in the Term Note (Exh. NEC-1, at 2). The pre-payment provisions are as follows: (1) payable by March 31, 1996, 60 percent of the Petitioner's annual excess cash flow earned in fiscal year 1995; (2) payable by March 31, 1997, 60 percent of Petitioner's annual excess cash flow earned in fiscal year 1996; and (3) payable by March 31, 1996, \$600,000 if the aggregate amount invested in the cable project at December 31, 1995 is less than \$250,000

(Exh. NEC-3, at 2). The Company notes that its total outstanding liabilities will not be increased by entrance into the Term Note (Exh. NEC-1, at 1,2).

### III. STANDARD OF REVIEW

In order for the Department to approve the issuance of stock,

bonds, coupon notes, or other types of long-term indebtedness<sup>1</sup> by an electric or gas company, the Department must determine that the proposed issuance meets two tests. First, the Department must assess whether the proposed issuance is reasonably necessary to accomplish some legitimate purpose in meeting a company's service obligations, pursuant to G.L. c. 164, § 14. Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 395 Mass. 836, 842 (1985) ("Fitchburg II"), citing Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 394 Mass. 671, 678 (1985) ("Fitchburg I"). Second, the Department must determine whether the Company has met the net plant test.<sup>2</sup> Colonial Gas Company, D.P.U. 84-96 (1984).

The courts have found that, for the purposes of G.L. c. 164, § 14, "reasonably necessary" means "reasonably necessary for the accomplishment of some purpose having to do with the obligations of the company to the public and its ability to carry out those obligations with the greatest possible efficiency." Fitchburg II at 836, citing Lowell Gas Light Company v. Department of Public Utilities, 319 Mass. 46, 52 (1946).

The Fitchburg I and II and Lowell Gas cases also established that

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<sup>1</sup> Long-term refers to periods of more than one year after the date of issuance. G.L. c. 164, § 14.

<sup>2</sup> The net plant test is derived from G.L. c. 164, § 16.

the burden of proving that an issuance is reasonably necessary rests with the company proposing the issuance, and that the Department's authority to review a proposed issuance "is not limited to a 'perfunctory review.'" Fitchburg I at 678; Fitchburg II at 842, citing Lowell Gas at 52.

In cases where no issue exists about whether the management decisions regarding the requested financing were the result of a reasonable decision-making process, the Department limits its review under Section 14 to the question of whether proceeds from an issuance will be used for a purpose that, on its face, is reasonable. Canal Electric Company, et al., D.P.U. 84-152, at 20 (1984); see, e.g., Colonial Gas Company, D.P.U. 90-50, at 6 (1990).

Regarding the net plant test, a company is required to present evidence that its net utility plant (original cost of capitalizable plant, less accumulated depreciation) equals or exceeds its total capitalization (the sum of its long-term debt and its preferred and common stock outstanding) and will continue to do so following the proposed issuance. Colonial Gas Company, D.P.U. 84-96, at 5 (1984).

#### IV. CAPITALIZATION AND NET PLANT

As of October 31, 1994, the Company's total capitalization consisted of \$700,000 in common stock, \$252,500 in additional paid-in capital, \$3,500,000 in Massachusetts Industrial Finance Agency ("MIFA") bonds, and \$2,150,000 under The First National Bank of

Boston term loan, for a total capitalization of \$6,602,500 (RR-DPU-1).

As of October 31, 1994, the Company's utility plant was \$17,969,208 (id.). The accumulated depreciation was \$8,633,471 (id.). Thus, as of October 31, 1994, the Company had a net utility plant of \$9,335,737, or \$2,733,237 more than its outstanding capitalization (id.).

V. ANALYSIS AND FINDINGS

The record in the present case demonstrates that the proposed Term Note is reasonably necessary to accomplish a legitimate purpose in meeting the Company's service obligations. In addition, based on the record evidence, the Department finds that the Company's proposed Term Note meets the net plant test.

In light of the above discussion and the evidence presented in this proceeding, the Department finds that, pursuant to G.L. c. 164 § 14, the Company has sufficiently demonstrated that the proceeds from the proposed Term Note will be used for purposes reasonably necessary for utility operations and in the interest of ratepayers.

VI. ORDER

Accordingly, after due notice, hearing and consideration, the Department hereby

VOTES: That the \$2,150,000 Term Note between the Company and The First National Bank of Boston, with a maturity date of three

years from closing, as submitted to the Department is reasonably necessary for utility operations and in the interest of ratepayers;



and it is

FURTHER ORDERED: That the Department hereby approves and authorizes in conformity with all the provisions of the law relating thereto, the \$2,150,000 Term Note, dated as of December 15, 1994, between Nantucket Electric Company and the First National Bank of Boston.

By Order of the Department,

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Kenneth Gordon, Chairman

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Mary Clark Webster,

Commissioner

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Janet Gail Besser, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).